IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

Crl.MC.No. 2062 of 2007()

CC.1246/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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PETITIONER: ACCUSED

P.D.SAJAN, AGED 37, S/O.DIVAKARAN,
POOVATHUMKADAVIL HOUSE, P.O.PANANGAD,
KODUNGALLOOR, THRISSUR DIST.

BY ADV. SRI.K.N.PADMAKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY S.I. OF POLICE,
CHERPU, THRISSUR DIST., THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2062 of 2007

Dated this the 27th day of June 2007

O R D E R

The petitioner was an accused along with others and he faces prosecution under Section 55(a) and 64 of the Kerala Abkari Act. The crime was registered as early as in 1997. Final report was filed. Cognizance was taken. The matter came up for trial. The petitioner was not available and therefore the case against him was split up. The co-accused, who stood trial, were not found guilty and acquitted. The case against the petitioner has been transferred to the list of long pending cases. The petitioner finds warrant of arrest and other coercive processes issued by the learned Magistrate chasing him. The petitioner, in these circumstances, has come to this court with a request that the case against him may be quashed invoking the powers under Section 482 Cr.P.C.

2. What is the reason? The only reason urged by the learned counsel for the petitioner is that the co-accused have been acquitted and in such trial against the co-accused, no evidence whatsoever has been adduced against the petitioner.

3. I am of the opinion that Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] answers the first contention raised by the petitioner squarely. The absconding co-accused, it has been held by the Full Bench, cannot claim any advantage or benefit on the basis of the acquittal of the co-accused. The learned counsel for the petitioner then submits that there is no evidence adduced against the petitioner in such trial against the co-accused. The prosecution was obviously not expected to adduce any evidence against the co-accused in such trial where the petitioner was not on the dock at all. The absence of specific evidence against the petitioner in such trial when he was not facing trial, cannot also deliver any advantage to the petitioner. It follows that the petitioner is not entitled to invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C.

4. This petition deserves to be and is hereby dismissed. The learned counsel for the petitioner finally submits that the learned Magistrate may be directed to consider his application for bail on merits, in accordance with law and expeditiously. The learned counsel submits that at the relevant point of time, the offences alleged were only bailable offences. It is for the

petitioner to raise all his contentions before the learned Magistrate and I have no reason to assume that the learned Magistrate would not consider such contentions on merits, in accordance with law and expeditiously. Every court must do the same. If the petitioner surrenders and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must pass appropriate orders on merits and expeditiously on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007